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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 SAM LEBYA,

8 Plaintiff(s),

Case No. 2:16-CV-1122 JCM (CWH)

ORDER

9 v.

10 NV ENERGY, INC.,

11 Defendant(s).

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13 Presently before the court is plaintiff Sam Lebya's motion to amend his complaint. (ECF  
14 No. 19). Defendant NV Energy, Inc. ("NV Energy"), has not filed a response. By not filing a  
15 response to Lebya's motion, NV Energy has effectively consented to the motion under Local Rule  
16 7-2(d).<sup>1</sup>

17 Lebya originally alleged three claims against NV Energy. (ECF No. 1). First, Lebya  
18 claimed that NV Energy violated Title VII of the Civil Rights Act and Nevada law by subjecting  
19 him to frequent acts of discrimination, harassment, and intimidation based on, *inter alia*, his  
20 ethnicity. *Id.* Second, Lebya claimed that NV Energy was negligent in its supervision of its agents,  
21 which caused harm to Lebya. *Id.* Third, Lebya claimed that NV Energy wrongfully terminated  
22 him. *Id.*

23 NV Energy filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). (ECF  
24 No. 13). In its motion to dismiss, NV Energy contended that Lebya did not allege sufficient facts  
25 to support his conclusory allegations; therefore, his cause of action did not meet the pleading  
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28 <sup>1</sup> Local Rule 7-2(d) indicates that "[t]he failure of an opposing party to file points and  
authorities in response to any motion, except a motion under Fed. R. Civ. P. 56 or a motion for  
attorney's fees, constitutes a consent to the granting of the motion."

1 standard under *Iqbal* and *Twombly*. *Id.* Further, NV Energy contends that Lebya did not exhaust  
2 his administrative remedies because he failed to file a claim with the U.S. Equal Employment  
3 Opportunity Commission (“EEOC”) before filing suit. *Id.* Lebya filed a response to this motion  
4 (ECF No. 15), to which NV Energy replied (ECF No. 17).

5 In order to rectify the deficiencies in his initial complaint, Lebya moves to amend his  
6 complaint. (ECF No. 19). Lebya submitted his proposed amended complaint, which does not  
7 include his negligent supervision and wrong termination claims. *See* (ECF No. 19-1).  
8 Additionally, Lebya’s proposed amended complaint adds facts that are intended to support his  
9 conclusory allegations including the fact indicating that he filed his claim with the EEOC before  
10 filing his complaint with this court. *Id.*

11 Federal Rule of Civil Procedure 15(a)(2) states: “[A] party may amend its pleading only  
12 with the opposing party’s written consent or the court’s leave. The court should freely give leave  
13 when justice so requires.” Moreover, “[a] district court determines the propriety of a motion to  
14 amend by ascertaining the presence of any of four factors: bad faith, undue delay, prejudice to the  
15 opposing party, and/or futility.” *Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877, 880 (9th Cir. 1999).  
16 Indeed, “this determination should be performed with all inferences in favor of granting the  
17 motion.” *Id.* “Where there is a lack of prejudice to the opposing party and the amended complaint  
18 is obviously not frivolous, or made as a dilatory maneuver in bad faith, it is an abuse of discretion  
19 to deny [a motion to amend].” *Howey v. United States*, 481 F.2d 1187, 1190–91 (9th Cir. 1973).

20 Here, there is no indication that there is any bad faith, undue delay, prejudice to the  
21 opposing party, or futility by allowing Lebya to amend his complaint. Lebya’s motion to amend  
22 attempts to rectify the issues with his first complaint by alleging more facts to support his  
23 remaining claim. Further, by not responding to the motion, NV Energy has expressed its consent  
24 to grant the motion under Local Rule 7-2(d). Given these circumstances, the court will grant leave  
25 to amend the complaint. Because Lebya’s motion to amend will be granted, NV Energy’s motion  
26 to dismiss as to the first complaint will become moot.

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